Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-290

AMERICAN CIVIL LIBERTIES UNION, *et al.*,
PETITIONERS,

versus

O. HARRY BOZARDT, JR., *et al.*, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at 539 F. 2d 340 (1976). The opinions delivered in the courts below are fully set out in the Appendix to the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

In addition to the provisions set forth in the Petition, the entire Rule on Disciplinary Procedure of the South Carolina Supreme Court is set out in the Appendix at 1a.

QUESTIONS INVOLVED

1. Whether the doctrines of equity, comity, and federalism expounded in *Younger v. Harris* apply to a state court disciplinary proceeding?

2. Whether the American Civil Liberties Union can seek federal equitable relief on behalf of its members, including Petitioner Jane Koe, if such federal intervention would directly interfere with a pending state proceeding against Petitioner Koe?

3. Whether the District Court correctly dismissed the petitioners' Complaint for failure to state facts sufficient to entitle them to federal intervention?

STATEMENT OF THE CASE

Petitioners, the American Civil Liberties Union and Jane Koe, filed this action in the United States District Court for the District of South Carolina on October 31, 1974, seeking injunctive relief, a declaratory judgment, and costs and attorney fees against the South Carolina Supreme Court's Board of Commissioners on Grievances and Discipline and the South Carolina Attorney General. The District Court dismissed the Complaint on the ground that petitioners had failed to state facts sufficient to entitle them to federal intervention under the principles set forth in *Younger v. Harris,* 401 U. S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), as applied in *Erdmann v. Stevens,* 458 F. 2d 1205 (2nd Cir., 1972), *cert. denied,* 409 U. S. 889, 93 S. Ct. 126, 34 L. Ed. 2d 148 (1972). [Appendix to Petition 27a.] A Motion to Alter or Amend was denied by the

District Court on January 23, 1975. [Appendix to Petition at 48a.] The United States Court of Appeals for the Fourth Circuit affirmed the holding of the District Court. [Appendix to Petition at 1a.] A Petition for Rehearing *en banc* was likewise denied [Appendix to Petition at 18a].

Petitioner Koe is an attorney licensed to practice law in the State of South Carolina and, at the time of these events, was engaged in private practice with the Carolina Community Law Firm (the firm's name was later changed). Koe during this period also served as an officer and member of the Board of Directors of the South Carolina Chapter of the American Civil Liberties Union. In July, 1973, Petitioner Koe met with several individual's including a Mrs. M. W. concerning the sterilizations performed on women by private physicians in Aiken County. During the meeting, Petitioner Koe advised Mrs. M. W. of her legal rights and remedies in regard to her sterilization and informed her of her right to bring an action for money damages against the doctor. In talking with Mrs. M. W., Petitioner represented herself to be an attorney and informed the group that the ACLU, also a petitioner herein, was an organization that could bring this legal action on behalf of these women. Mrs. M. W. advised Petitioner Koe that she would contact her, if she decided to bring such an action. On August 30, 1973, without having been contacted by Mrs. M. W. in any way during the interim, Petitioner Koe wrote to Mrs. M. W. on the stationery of her private law firm, Carolina Community Law Firm, signing the letter as Attorney-at-Law. In her letter, Petitioner Koe stated:

> You will probably remember me from talking with you at Mr. Allen's office in July about the sterilization performed on you. The American Civil Liberties Union

> would like to file a law suit on your behalf for money against the doctor who performed the operation.
>
> • • •
>
> About the lawsuit, if you are interested let me know, and I'll let you know when we will come down to talk to you about it.

Thereafter, Mrs. M. W. informed Petitioner Koe that she had no intention of suing her doctor.

On October 19, 1974, John W. Williams, Secretary of The Board of Commissioners on Grievances and Discipline, filed a Complaint against Petitioner alleging that Petitioner Koe's letter to Mrs. M. W. constituted solicitation in violation of the Code of Professional Responsibility. [Appendix to Petition at 29a.] On October 31, 1974, the petitioners filed their action in District Court seeking to enjoin the Board from hearing or otherwise processing the Complaint against Petitioner Koe. The petitioners' Complaint made the bare allegation that the disciplinary action was initiated against Petitioner Koe in bad faith[1] for purposes of harrassment because of a lawsuit brought by the ACLU[2]. They further allege that Rule 4(d) of the South Carolina Supreme Court's Rules on Disciplinary Procedure was vague and overbroad in violation of the First and Fourteenth Amendments to the United States Constitution. The

[1] The petitioners' complaint in this action did not allege any acts of "bad faith" against the Board of Commissioners on Grievances and Discipline, but only against the South Carolina Attorney General's Office, a separate and distinct entity. (*See*, Petitioners' Brief, page 7.) The complainant in the grievance proceeding was John W. Williams, a private attorney who serves as the Secretary of The Board of Commissioners on Grievances and Discipline, but not as a Board member.

[2] On April 15, 1974, a civil action was filed by two black women (not Mrs. M. W.), which was entitled *Doe v. Pierce*, Civil Action No. 74-475 (D. S. C.). The plaintiffs were represented by attorneys associated with the ACLU. The South Carolina Attorney General's Office represented the State Commissioner and the Aiken County Director of the Department of Social Services. The trial resulted in verdicts in favor of both state defendants. A judgment for nominal damages was awarded on behalf of one of the plaintiffs against the private physician who was represented by private counsel. No member of the Board of Commissioners or its Secretary, Mr. Williams, represented any party or was in any other way connected with *Doe v. Pierce*.

petitioners further alleged in their Complaint before the District Court that the Board was collaterally estopped because of the proceedings in *Doe v. Pierce*, or alternatively that *Doe v. Pierce* was *res judicata* as to the issue of solicitation, and that the Board had no authority to supervise or discipline the conduct of attorneys, when such conduct occurs in practicing before federal courts.[3]

The Respondents make no statement in response to Petitioners' statement concerning any disciplinary proceeding or panel report in regard to Petitioner Koe.[4]

[3] On May 10, 1974, a hearing was held before the Honorable Sol R. Blatt, United States District Court Judge for the District of South Carolina and the presiding judge in *Doe v. Pierce*, concerning the issue of solicitation as it affected the appropriateness of a class action. Permission was granted to take the depositions of plaintiffs in order to determine if similar letters had been sent out to other women. During the course of this hearing, Judge Blatt made the following statements in regard to proceeding for a possible ethical violation:

> The COURT: If I were to decide that it had no bearing on the litigation itself, you may or may not want to bring the letter to the attention of the appropriate authority that is set up to handle such matters.
>
> • • •
>
> I think he [plaintiffs' attorney] is correct, that solicitation has nothing to do with the right of plainiffs to bring the suit. Then solicitation would be an issue before the appropriate authorities and not before the court.
>
> • • •
>
> Active solicitation might subject the person soliciting to a criminal procedure or it might subject them to disciplinary action by the appropriate legal committee, but it has nothing to do with the case itself.

Thereafter, depositions as ordered by Judge Blatt were scheduled during the first week of August, 1974. On August 19, 1974, Petitioner Koe's letter was forwarded to the Board for whatever action the Board deemed appropriate. In this regard, Disciplinary Rule 1-103(A) of the Code of Professional Responsibility provides:

> A lawyer possessing unprivileged knowledge of a violation of DR 1-102 [which defines "misconduct"] shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

The attorney in the Office of the Attorney General of South Carolina that forwarded Petitioner Koe's letter to the Board, was not the Attorney responsible for prosecuting this case before the Board (nor was the prosecuting attorney an attorney in any way involved in *Doe v. Pierce*).

[4] Rule 18 of the South Carolina Supreme Court's Rule on Disciplinary Procedure provides that all proceedings and documents relating to complaints and hearings thereon and to proceedings in connection therewith shall be private, unless the attorney involved shall request in writing that they be public and the court shall so order. A violation of this provision is deemed as contempt of the South Carolina Supreme

ARGUMENT

I. The courts below did not misapply decisions of this Court in dismissing the Complaint for failure to state facts sufficient to entitle the parties to federal equitable intervention.

The petitioners contend that *certiorari* should be granted because the courts below "decided an important question of federal practice by an unprecedented and unwarranted extension of the application of the doctrine of comity." The petitioners further argue that the courts below misapplied *Younger v. Harris,* 401 U. S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971) and its progeny to this case because: (1) the disciplinary proceeding was an administrative proceeding; (2) there was no state proceeding pending against the Petitioner ACLU; and (3) the petitioners' case falls within one of the exceptions recognized in *Younger v. Harris, supra.*

A. The Disciplinary Proceeding was an Administrative Action.

Contrary to petitioners' assertions, this Court has on several occasions suggested that disciplinary proceedings are entitled to the considerations of equity, comity and federalism set forth in *Younger v. Harris, supra. See, Mildner v. Gulotta,* 405 F. Supp. 182 (E. D. N. Y. 1975), *aff'd,* 425 U. S. 901, 96 S. Ct. 1489, 47 L. Ed. 2d 751 (1976); *Anonymous v. Association of the Bar of the City of N. Y.,* 515 F. 2d 427 (2nd Cir. 1975), *cert. denied,* 423 U. S. 863, 96 S. Ct. 71, 46 L. Ed 2d 92 (1975); *Erdmann v. Stevens,* 458 F. 2d 1205 (2nd Cir. 1972), *cert. denied,* 409 U. S. 889, 93 S. Ct. 126, 34 L. Ed. 2d 147 (1972). In *Erdmann v. Stevens, supra,* the court found that the Appellate Division, First Department, was acting in a judicial capacity as a state court in the disciplinary proceedings, and that the proceedings were judicial, not administrative, in nature. *Id.* at 1209. The New York disciplinary procedure[5] appears to be very similar, if not identical, to the procedure used by the South Carolina Supreme Court. As in the New York procedure, the South Carolina Supreme Court has exclusive power to resolve issues as to alleged misconduct of attorneys practicing before it.[6] As in New York[7], the South Carolina Supreme Court invokes the assistance of a board or committee to conduct hearings with respect to complaints regarding members of the bar,[8] but the disciplinary power continues to rest ultimately with the court and the findings of the

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Court. On October 28, 1976, respondents were informed by the Clerk of the South Carolina Supreme Court that Section 18 of the Rule had not been relaxed in any way. Respondents are shocked that attorneys for petitioners would introduce parts of a panel report, which is not part of the record in this appeal, especially after petitioners' attorneys were severely admonished by the court for attempting to introduce this document at oral argument before the United States Court of Appeals over our objection and in violation of the South Carolina Supreme Court's Rule.

[5] New York Judiciary Law § 90(2).

[6] Rule 3 of the South Carolina Supreme Court's Rule on Disciplinary Procedure provides:

> All proceedings for the investigation of complaints and grievances involving alleged misconduct of any member of the bar of this state, all proceedings for the discipline of such members of the bar, and all proceedings for reinstatement to the practice of law in this state shall be brought, conducted and disposed of in accordance with the provisions of this Rule.

[7] *See, Mildner v. Gulotta, supra,* at 190; *Erdmann v. Stevens, supra,* at 1209.

[8] Such a procedure is used by federal courts who employ a special master to hear and report. Rule 53, Federal Rules of Civil Procedure. In *Anonymous, supra,* Appellants attempted to distinguish *Erdmann, supra,* in that injunctive relief was being sought against a grievance committee, not the court. The court noted that the committee was performing its duties as a quasi-judicial body and an arm of the court, much as the special master in federal court, and thus that a proceeding before such a committee constituted a "judicial proceeding."

Board are in no way binding upon the Court.[9] Petitioners contend that a disciplinary proceeding is neither a criminal prosecution nor a state civil proceeding which is in aid of or closely related to criminal statutes. *Huffman v. Pursue, Ltd.*, 592 U. S. 420, 95 S. Ct. 1200, 43 L. Ed. 2d 482 (1975). While this Court has held that a disciplinary proceeding is a judicial proceeding of a quasi-criminal nature, *In re Ruffalo*, 390 U. S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968); *Mildner v. Gulotta, supra*, it is submitted that the notions of comity and federalism as expressed by the Court in *Younger* should not turn on labels such as "civil" or "criminal" but rather upon an analysis of the competing interests involved in each case. *Lynch v. Snepp*, 442 F. 2d 769 (4th Cir. 1973). As the court in *Huffman v. Pursue, Ltd., supra*, observed:

> [I]nterference with a state judicial proceeding prevents the state not only from effectuating its substantive policies, but also from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies. Such interference also results in duplicative legal proceedings, and can readily be

[9] The Board of Commissioners on Grievances and Discipline was created by the South Carolina Supreme Court to "receive, entertain, inquire into, take proofs, make findings, and submit recommendations to the court concerning complaints of misconduct." In *Burns v. Clayton*, 237 S. C. 316, 331, 117 S. E. 2d 300, 301 (1960), the South Carolina Supreme Court expressed the duties and responsibilities of the Board as follows:

> . . . The Board of Commissioners on Grievances and Discipline are offices of this Court, commissioned and charged with the duty of investigating alleged misconduct on the part of their fellow members of the Bar of this State and of reporting to this Court the proceedings of their findings and recommendations. . . The Board's report is advisory only, this Court being in nowise bound to accept its recommendations; and upon this Court alone rests the duty and the grave responsibility of adjudging, from the record, whether or not professional misconduct has been shown, and of taking appropriate disciplinary action thereabout.

Rule 34 of the Court's Rule on Disciplinary Procedure provides:

> Nothing in these Rules shall be construed to deprive the Supreme Court of the authority to require the certification to it of the record in any case, for such action as it deems proper.

> interpreted "as reflecting negatively upon the state courts' ability to enforce constitutional principles." (Citations omitted.)
>
> The component of *Younger* which rests upon the threat to our federal system is thus applicable to a civil proceeding such as this quite as much as it is to a criminal proceeding. *Id.* at 604, 95 S. Ct. at 1208, 43 L. Ed. (2d) at 492.

Therefore, *Huffman* establishes that the principles of comity and federalism "are not to be discarded simply because the state action sought to be enjoined is yclept civil." *Anonymous v. Association of the Bar of the City of N. Y., supra*, at 433.

In *Erdmann v. Stevens, supra*, the court appropriately observed the interests of the courts in disciplining its attorneys:

> The relationship between a court and those practicing before it is a delicate one. It would appear axiomatic that the effective functioning of any court depends upon its ability to command respect not only from those licensed to practice before it but also from the public at large. It requires little vision to appreciate that if a state court were subject to the supervisory intervention of a federal overseer at the threshold of the court's initiation of a disciplinary proceeding against its own officer, the state judiciary might suffer an unfair and unnecessary blow to its integrity and effectiveness. *Id.* at 1210.

Petitioners' contention that the disciplinary procedure in this case is administrative in nature is based on the clearly erroneous statement that the South Carolina Supreme Court does not have jurisdiction to review this case. Such a contention is directly refuted by the Rule of Disciplinary Procedure[10] and South Carolina court decisions.[11] The

[10] *See*, Rule 34.
[11] *See*, Burns v. Clayton, 237 S. C. 316, 117 S. E. 2d 300 (1960).

petitioners must admit error in this regard since the South Carolina Supreme Court, pursuant to Rule 34, granted Petitioner Koe's petition for writ of *certiorari* in the grievance case.[12]

B. No state proceeding was pending against Petitioner ACLU.

Petitioner ACLU contends that the courts below erred in denying the ACLU the opportunity to litigate its claim for declaratory relief. In the Complaint before the District Court, petitioners had requested the District Court to declare "that the [grievance] complaint filed against plaintiff Koe and proceedings before the Board of Commissioners on Grievances and Discipline violate rights secured to plaintiffs by the First and Fourteenth Amendments of the United States Constitution."

Standing to bring suit must be personal to and satisfied by those who seek to invoke the power of the federal courts. The plaintiff must allege that he has sustained or is immediately in danger of sustaining some direct injury as a result of the challenged statute or official conduct. *Massachusetts v. Mellon*, 262 U. S. 447, 43 S. Ct., 597, 67 L. Ed. 1078 (1923); *O'Shea v. Littleton*, 414 U. S. 488, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974).[13] A grievance action

[12] By letter dated October 28, 1976, attorneys for Petitioners advised this Court that the South Carolina Supreme Court on September 16, 1976, granted Petitioner Koe's request to review the disciplinary proceeding in *Williams v. Anonymous.*

[13] In *Allee v. Medrano*, 416 U. S. 802, 94 S. Ct. 2191, 40 L. Ed. 2d 566 (1974) Chief Justice Burger observed in his separate opinion that:

> Prosecutions instituted against persons who are not named plaintiffs cannot form the basis for standing of those who bring the action. In particular, a named plaintiff cannot acquire standing to sue by bringing his action on behalf of others who suffered injury which would have afforded them standing had they been named plaintiffs; it bears repeating that a person cannot predicate standing on injury which he does not share. Standing cannot be acquired through the backdoor of a class action. *Id.* at 828-9, 94 S. Ct. at 2207, 40 L. Ed. 2d at 588.

Petitioner ACLU has not claimed that it has ever been threatened with prosecution, if indeed such a prosecution was possible, or that a prosecution was even likely. Petitioner ACLU merely claimed that the prosecution of Koe had a "chilling effect" on their First and Fourteenth Amendment rights. This Court has held that such an allegation is not sufficient to bring the equitable jurisdiction of federal courts into play to enjoin a pending state prosecution. *Younger v. Harris*, 401 U. S. 37, 51, 91 S. Ct. 746, 754, 27 L. Ed. 2d 669, 679. Therefore, there is no case or controversy with the petitioner ACLU. The United States Court of Appeals for the Fourth Circuit correctly held that the ACLU had no independent standing to challenge state disciplinary proceedings since no disciplinary proceedings can be brought against the ACLU itself. [Appendix to Petitioners' Brief at 7a.]

is a proceeding against an individual attorney's license to practice law. *Burns v. Clayton*, 237 S. C. 316, 117 S. E. 2d 300 (1960). Therefore, it is apodictic that the ACLU has not sustained or is not in danger of suffering any direct injury as a result of the grievance Complaint against Petitioner Koe. Any standing by the Petitioner ACLU to seek a declaratory judgment for the filing of a grievance Complaint against Koe, would be a derivative right based on the injury suffered by its member, Petitioner Koe. The Petitioner ACLU asserts the derivative right to bring a declaratory judgment action on behalf of its member Koe.[14] The Fourth Circuit correctly noted, however, that:

> If the ACLU were found to have standing to assert rights of its associated attorneys derivatively, and this standing was asserted only on the basis of the injury to Koe, it is clear that the organization's action for equitable relief would be subject to the same restrictions as Koe's action, since its rights would be derived entirely from Koe's rights . . . To permit the ACLU to assert rights to those associates not bound by the *Younger* restrictions in order to obtain federal equitable relief which would necessarily benefit all its associates would directly interfere with the pending state proceedings, and have the effect of circumventing the *Younger* restrictions which bar Koe from seeking direct federal relief. We conclude that *Allee* and *Steffel*

[14] The court below noted that *Allee v. Medrano*, 416 U. S. 802, 94 S. Ct. 2191, 40 L. Ed. 2d 566 (1974), recognized that a labor union had standing to raise any claims that one of its members would have, if the union was in a position to suffer real injury derivatively when there was infringement upon the Constitutional rights of its member. However, it was unnecessary to decide if the ACLU has such standing in this case. [Appendix to Petition at 7a.]

> were not intended to be interpreted so as to permit a litigant to avoid *Younger* restrictions merely by joining his claim with claims of others asserting a joint interest. [Appendix to Petitioner's Brief at 9a.][15]

To allow Petitioner ACLU to seek declaratory relief on issues which are identical to those pending before a state proceeding would result in an unnecessary duplication of legal proceedings. In *Erdmann v. Stevens,* 458 F. Supp. 1205 (2nd Cir. 1972) the court opined:

> Undoubtedly because of [the] general recognition of the advisability of permitting state courts first to act with respect to the delicate relationship between themselves and their officers, the traditional method of obtaining adjudication of federal constitutional questions arising out of such disciplinary proceedings has been by way of the state appellate court route to the Supreme Court rather than by direct federal intervention at the initial stages. *Id.* at 1211.

Furthermore, federal intervention would be disruptive of the state grievance proceeding and reflect negatively on the state court's ability to enforce constitutional principles.

C. **The petitioners' Complaint did not state facts sufficient to fall within the exceptions to** *Younger v. Harris.*

Contrary to petitioners assertions, the courts below found that petitioners' case did not fall within the exceptions to the general rule against federal intervention as set forth in *Younger v. Harris, supra.* The District Court complaint made bare assertions that the disciplinary action

[15] In *Steffel v. Thompson,* 415 U. S. 452, 94 S. Ct. 1209, 39 L. Ed. 2d 505 (1976) declaratory relief was sought by an individual who had been threatened with prosecution for distributing anti-war literature with another individual (who had been prosecuted). Thus, the plaintiff in *Steffel* was asserting his personal right rather than a derivative right. This Court noted in *Doran v. Salem Inn, Inc.,* 422 U. S. 922, 95 S. Ct. 2561, 45 L. Ed. 648 (1975), that there would plainly be circumstances in which legally distinct parties are so closely related that they should all be subject to the *Younger* considerations which govern any one of them.

was in bad faith and for purposes of harrassment. However, the only factual allegation in support of such bare assertions was that the South Carolina Attorney General had withheld a "ruling" by the District Court in *Doe v. Pierce,* Civil Action 74-475 (D. S. C.) from the Board, which "ruling" was *res judicata* as to the issue of solicitation, or collaterally estopped the proceedings before the Board. The District Court specifically rejected the argument that the "ruling" had any effect on the grievance proceeding. [Appendix to Petition at 43a-44a.] No allegation could be made, or was made, that the same disciplinary rules were not applied equally to all members of the South Carolina Bar. Thus, the petitioners' Complaint did not establish the type of selective bad faith prosecution which justified an exception to *Younger.*[16] *See, Niles v. Lowe,* 407 F. Supp. 132 (D. Hawaii 1976). Furthermore, the courts below correctly noted that there was also no showing of irreparable injury, both great and immediate. *Younger v. Harris, supra,* at 46, 91 S. Ct. at 751, 27 L. Ed. 2d at 676-7. Any threats which these proceedings pose to petitioners' federal rights may be eliminated by presenting their contentions to the South Carolina Supreme Court.[17] [Appen-

[16] The court in *Anonymous v. Association of the Bar of the City of N. Y.,* 515 F. 2d 427 (2nd Cir. 1975), noted that the plaintiffs in *Dombrowski v. Pfister,* 380 U. S. 479, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965), alleged that police had made illegal searches, that prosecutors threatened prosecution under unconstitutional statutes, and that the illegally obtained documents were being shown at public hearings. As in *Anonymous,* the plaintiffs in this case have made no showing of the type of official lawlessness which warranted federal intervention in *Dombrowski.*

[17] In *Younger v. Harris, supra,* this Court held that:

> Certain types of injury, in particular the cost, anxiety and inconvenience of having to defend against a single criminal prosecution, could not by themselves be considered "irreparable" in the special legal sense of that term. Instead, the threat to plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution. *Id.* at 46, 91 S. Ct. at 751, 27 L. Ed. 2d at 676-7.

Thus, the Court in *Erdmann v. Stevens, supra,* at 1208, correctly observed that the plaintiff must show grave and irreparable injury without reasonable prospect that the state court would respect and satisfactorily resolve the constitutional issues raised.

dix to Petition at 41a.] *See, Niles v. Lowe, supra; Erdmann v. Stevens,* 458 F. 2d 1205 (2nd Cir. 1972), *cert. denied,* 490 U. S. 889, 93 S. Ct. 126, 34 L. Ed. 2d 147 (1972). Having found no sufficient allegation of bad faith, harrassment, or irreparable injury, both grave and immediate, the courts below were correct in dismissing the petitioners' Complaint under the doctrine of *Younger v. Harris, supra.*

Moreover, the petitioners' allegation in their Complaint that Rule 4(d) of the South Carolina Supreme Court's Rule on Disciplinary Procedure[18] is vague and overbroad does not meet the requirements for federal intervention under *Younger v. Harris, supra.* This allegation is no more than an assertion that the statute is vague and overbroad "on its face". In *Younger,* this Court opined:

> We do not think that opinion [*Dombrowski v. Pfister, supra,*] stands for the proposition that a federal court can properly enjoin enforcement of a statute solely on the basis of a showing that the statute "on its face" abridges First Amendment Rights. *Id.* at 53, 91 S. Ct. at 755, 27 L. Ed. 2d at 681.

The petitioners did not in fact allege, as they argue in their Brief, that the Rule is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence, and paragraph, and in whatever manner and against whomever an effect might be made to apply it.[19]

[18] Acually, as noted by the District Court [Appendix to Petition at 29a, 33a] the grievance Complaint charged misconduct by a violation of the Canons of Ethics [Code of Professional Responsibility] or by conduct tending to pollute or obstruct the administration of justice or to bring the courts or legal profession into disrepute. *See also,* ABA's Code of low that a violation of the Code of Professional Responsibility would also be conduct tending to pollute the administration of justice or to bring the courts or legal profession into disrepute. *See also,* ABA's Code of Professional Responsibility, Disciplinary Rule 1-102(A)(5).

[19] Younger v. Harris, *supra,* at 53-4, 94 S. Ct. at 755, 27 L. Ed. 2d at 681.

Therefore, the courts below were again correct in finding that petitioners' case did not fall within the exceptions of *Younger v. Harris.*[20]

II. There is no conflict of decisions.

The petitioners contend that there is a conflict of decisions among the circuit courts of appeal concerning the application of *Younger v. Harris,* 401 U. S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971) to grievance proceedings, citing *Polk v. State Bar of Texas,* 480 F. 2d 998 (5th Cir. 1973) and *Erdmann v. Stevens,* 458 F. 2d 1205 (2nd Cir. 1972), *cert. denied,* 409 U. S. 889, 93 S. Ct. 126, 34 L. Ed. 2d 147 (1972); *Anonymous v. Association of the Bar of the City of N. Y.,* 515 F. 2d 427 (2nd Cir. 1975), *cert. denied,* 423 U. S. 863, 96 S. Ct. 71, 46 L. Ed. 2d 92 (1975); and the courts below.

Actually the *Polk* case is readily distinguishable from the Second Circuit decisions and the decisions of the courts below. In Texas, the grievance system is bifurcated—the grievance committee of the State Bar can hear the case itself (in which case the committee does not have the power to disbar or suspend) or a formal complaint can be issued in the state district courts. In *Polk,* the court was only considering the application of *Younger* to a proceeding before the grievance committee of the State Bar and not a pro-

[20] The petitioners by letter, dated October 28, 1976, to the Clerk of the United States Supreme Court requested that their Petition in this case be deferred until the South Carolina Supreme Court had ruled in this grievance case, *Williams v. Anonymous.* Thus, they have tacitly recognized that their rights can best be adjudicated after the state court has construed the disciplinary rules or other state laws involved. This realization is indeed the very essence of the decisions in *Erdmann, Anonymous,* and *Mildner v. Gulotta, supra,* which support the traditional method of adjudication of federal rights in grievance proceedings by way of the state appellate court route to the United States Supreme Court.

ceeding before the courts.[21] Under the South Carolina Supreme Court's Rule on Disciplinary Procedure, the Board of Commissioners is empowered to hear all cases and recommend not only a reprimand but suspension or disbarment.[22]

In any event, this Court has adopted the decisions of the Second Circuit in *Erdmann* and *Anonymous* holding that grievance proceedings are judicial proceedings to which *Younger* applies. *Mildner v. Gulotta,* 405 F. Supp. 182 (E. D. N. Y. 1975), *aff'd,* 425 U. S. 901, 96 S. Ct. 1489, 47 L. Ed. 2d 751 (1976). Therefore, to the extent that *Polk* conflicts with this Court's decision in *Mildner v. Gulotta, supra,* it would be overruled and any conflict removed.

CONCLUSION

For the foregoing reasons, the respondents submit that the petitioners' Petition for a Writ of *Certiorari* should be denied.

Respectfully submitted,

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[21] In *Niles v. Lowe,* 407 F. Supp. 132 (D. Hawaii 1976), the Court observed that conventional administrative agencies, even when they adopt quasi-judicial procedures, derive their delegated authority not from the courts but from the legislature. In South Carolina, as in New York, the Board is an agent of the South Carolina Supreme Court and its inquiries are a part of the court's judicial function.

[22] *Taylor v. Kentucky State Bar Association,* 424 F. 2d 478 (6th Cir. 1970) does not support petitioners' contention since it was a pre-*Younger* case.

APPENDIX

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RULE ON DISCIPLINARY PROCEDURE

(As amended by the Supreme Court on June 12, 1975.)

1. **Creation of Board of Commissioners on Grievances and Discipline.**

There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. The said Board of Commissioners is empowered and charged to receive, entertain, inquire into, take proofs, make findngs, and submit recommendations to this Court, as hereinafter provided:

(a) concerning complaints of misconduct, as hereinafter defined, on the part of any member of the bar of this state;

(b) concerning practices of any member of the bar of this state which tend to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute; and

(c) relating to petitions for reinstatement of the practice of law in this state.

2. **Constitution, Appointment and Tenure of the Board of Commissioners on Grievances and Discipline.**

The said Board of Commissioners shall be appointed by this court and shall consist of one (1) member of the bar of this state from each of the Judicial Circuits of the state. The term of office of each member of the said Board shall be three years, or until a successor has been appointed, and shall begin on the first day of October next following his or her appointment. Vacancy for any cause shall be promptly filled by appointment by this Court for the unexpired term. At the time of its initial appointments to membership, and each year thereafter, this Court shall designate one member as Chairman of the said Board of Commissioners and shall also designate a Secretary, who may, but need not, be a member of the said Board. Provided, however, should any member be engaged in a Panel or

Panels at the expiration of his term, he shall continue to serve until completion of his work on such Panel or Panels as a member thereof despite the fact that his successor for all other purposes of the Board of Commissioners on Grievances and Discipline has been appointed and qualified.

3. **Rule Exclusive.**

All proceedings for the investigation of complaints and grievances involving alleged misconduct of any member of the bar of this state, all proceedings for the discipline of such members of the bar, and all proceedings for reinstatement to the practice of law in this state shall be brought, conducted and disposed of in accordance with the provisions of this rule.

4. **Misconduct Defined.**

Misconduct, as the term is used herein, means any one or more of the following:

(a) violation of any provision of the oath of office taken upon admission to the practice of law in this state;

(b) violation of any of the Canons of Professional Ethics as adopted by this court from time to time;

(c) commission of a crime involving moral turpitude;

(d) conduct tending to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute.

(e) emotional or mental stability so uncertain, as in the judgment of ordinary men, would render a person incapable of exercising such judgment and discretion as necessary for the protection of the rights of others and/or their property or interest in property.

5. **Manner of Discipline.**

Every member of the bar found guilty of misconduct shall be disciplined, in accordance with the seriousness of such misconduct, by:

(a) permanent disbarment; or

(b) suspension for an indefinite period from the office of attorney at law, subject to reinstatement only as hereinafter provided; or

(c) public reprimand; or

(d) private reprimand.

6. **Effect of Discipline.**

A person disbarred shall never be readmitted to the practice of law in this state.

A person who, having voluntarily surrendered his license to practice, has been thereafter reinstated in the manner hereinafter provided, or who, having been suspended for an indefinite period from the office of attorney at law, has been thereafter reinstated in the manner hereinafter provided, shall be disbarred upon being found guilty of subsequent misconduct.

A person who, having been publicly reprimanded for misconduct, is thereafter found guilty of subsequent misconduct, shall be suspended for an indefinite period from the office of attorney at law, or permanently disbarred, depending upon the seriousness of such misconduct.

7. **Complaint.**

A complaint, as the term is used herein, means a formal written complaint alleging misconduct on the part of a member of the Bar of this State, who shall be designated therein as the respondent. The complainant may be (1) any individual, firm or corporation; (2) the grievance committee of a regularly organized local bar association; or (3) a member of the Board of Commissioners as provided in Section 31 of this Rule. Such complaint shall not be accepted for filing unless it is:

(a) verified under oath of the complainant; or

(b) signed by one or more members in good standing of the Bar of this State, as counsel for the complainant. Signature by such counsel shall constitute a representation that he or they (1) have investigated the charges of misconduct alleged in the complaint, (2) believe reasonable cause exists to warrant a hearing on said complaint, and (3) have accepted the responsibility of prosecuting the complaint to conclusion. When the grievance committee of a regularly organized local bar association is the complain-

ant, verification of the complaint shall be by the chairman of that committee.

By filing a Complaint with the Commission the Complainant places himself or herself under these Rules and submits himself or herself to the jurisdiction of the Court and the Board of Commissioners. Any Complainant who shall, without just cause or excuse, after Notice of a hearing duly given, fail to appear before the Panel at the time prescribed in said Notice, shall render himself or herself subject to taxation of costs incurred for such hearing and shall be deemed in contempt of this Court and punishable accordingly; and any Complainant found by the Board, or any Panel hearing a Complaint, to have filed a complaint without just cause or excuse or to be otherwise motivated by malice or reason contrary to the spirit of this Rule, shall likewise be in contempt of this Court and punishable accordingly. If such Complainant be a lawyer he shall be subject to Complaint against him for misconduct.

Whenever a Complaint charges a Respondent with misconduct because of practicing law when not capable of exercising the discretion and judgment necessary as provided by Sec. 4 (c), the Secretary shall forward with the copy of the Complaint mailed in accordance with this Rule, a Notice to Respondent that a Guardian ad Litem must be, within twenty days, appointed in his behalf by the Clerk of the Court on Petition by Respondent or someone in behalf of Respondent, and in the event Respondent fails to have a Guardian ad Litem so appointed, the Commission will petition the Clerk of this Court for such appointment.

8. **Filing of Complaint; Procedure Thereon.**

All complaints shall be filed in quadruplicate with the Secretary of the Board of Commissioners. If the said Board of Commissioners shall find that the complaint, upon its face, does not state facts sufficient to charge misconduct as herein defined, the said complaint shall be dismissed, and the Secretary of the Board shall so notify the complainant. Otherwise the said Secretary shall forthwith cause to be sent to the respondent by registered mail a copy of said complaint, together with a notice, signed by the said Secretary, requiring the respondent, within twenty (20) days after the mailing of such notice, to file with the Board, in quadruplicate, his answer to the complaint, and to serve a copy of said answer upon the complainant or his counsel of record. The answer shall be signed by the respondent or by his counsel, or by both, and may, but need not be, verified.

The Secretary shall also forward to the resident judge of the attorney a copy of said complaint and any answer filed by respondent or his counsel. Thereafter the Secretary shall notify the resident judge of the disposition by the Board. All such communications shall be confidential except as between the resident judge and the presiding judge of the Circuit or any county court judge within the Circuit.

9. **Hearing by Panel of Three Commissioners.**

After respondent's answer has been filed, or the time has expired within which respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice to complainant and respondent or their counsel, by a panel of three (3) Commissioners appointed by the Chairman of the said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. No member of such panel shall be a resident of the Judicial Circuit from which the complaint originated, or of the Judicial Circuit in which the respondent resides at the time of the filing of the complaint. The Chairman of the Board of Commissioners may, whenever he deems it advisable, request the Attorney General's Office to handle the prosecution of a claim before the hearing panel.

10. **Duty of the Panel.**

(a) If the panel shall find that the charges in the complaint are not supported by the evidence, or do not merit the taking of disciplinary action, the panel will make a certified report of the proceedings before it, including its findings of fact and recommendations and shall file the same and an itemized statement of the actual and necessary expenses incurred by it in connection with such proceedings with the Secretary of the Board of Commissioners.

(b) If the panel shall find and determine that the respondent is guilty of misconduct and that a private reprimand should be administered, the panel shall make a certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same and an itemized statement of the actual and necessary expenses incurred by it in connection with such proceedings with the Secretary of the Board of Commissioners.

(c) If the panel shall find and determine that the respondent is guilty of misconduct meriting public reprimand, indefinite suspension, or permanent disbarment, it shall make a certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with a transcript of the testimony taken, such exhibits as may have been in evidence before it, and an itemized statement of the actual and necessary expenses incurred by it in connection with such proceedings, with the Secretary of the Board of Commissioners.

11. **Review by the Board of Commissioners; Private Reprimand.**

Whenever the panel has filed its report, the Board of Commissioners through its Secretary, shall, before acting upon such report, notify the respondent and his counsel, if any, of the time and place at which the Board will consider the report for the purpose of determining its action thereon, such notice to be given not less than thirty days prior to such meeting. The respondent and his counsel shall have the right, and shall be so informed in said notice, to appear before the Board at said meeting and thereupon to submit briefs and be heard in oral argument in opposition to or in support of the recommendations of the panel. Like notice shall be given, and like opportunity to submit briefs and be heard in oral argument in support of or in opposition to the recommendations of the panel shall be afforded, to the complainant and his counsel, if any, and to the Attorney General's Office where that office has participated in the hearing before the panel.

Upon consideration of the report of the panel, and the showing made to the Board, the Board of Commissioners may:

(a) Refer the matter back to the panel for further hearing; or

(b) Order a further hearing before the said Board of Commissioners; or

(c) Proceed upon the certified report of the prior proceedings before the panel.

Upon its final review, the Board of Commissioners may either dismiss the complaint or find that the respondent is guilty of misconduct. If the Board shall determine that a private reprimand should be administered, it shall administer such reprimand. If the complaint is dismissed or if a private reprimand is administered, the Secretary of the Board of Commissioners shall thereupon so notify the respondent, the complainant, all counsel of record, and, when deemed appropriate, and requested in writing by respondent, the local Bar Association, or associations of the county or counties in which respondent resides and maintains an office, and other county or counties from which the complaint arose.

12. **Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review.**

If the Board of Commissioners shall determine that the respondent is guilty of misconduct meriting public reprimand, indefinite suspension, or permanent disbarment, it shall make a final certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with a transcript of the testimony taken, and such exhibits as may have been in evidence before it, and an itemized statement of the actual and necessary expenses incurred by the hearing panel and by the Board in connection with the proceeding, in the office of the Clerk of this Court; and the Secretary of the Board of Commissioners shall forthwith notify the respondent and the complainant, or their counsel, of such action, enclosing with such notice a copy of the Board's findings of fact and rec-

ommendations and a copy of the statement of expenses before mentioned.

13. **Court to Order Respondent to Show Cause.**

Upon the filing of such final report of the Board of Commissioners, this Court shall issue its order directed to the respondent, requiring him to show cause before this Court at a time to be therein specified, but not less than forty (40) days after issuance of such order, why the report of the Board of Commissioners should not be confirmed and a disciplinary order entered. Copies of such order to show cause, certified by the Clerk of this Court, shall be served under his direction upon the respondent and the complainant, or their counsel, personally or by registered mail.

14. **Return of Respondent; Briefs.**

At least twenty (20) days before the date for showing cause stated in the order of this Court, the respondent shall make return to said order, setting forth his grounds of objection to the findings and recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report of said Board upon which the said order to show cause was issued, and shall file with the Clerk of this Court the original and ten copies of such return, together with proof of service of the said return upon the Secretary of the Board of Commissioners, upon the complainant or his counsel, and upon the Attorney General of South Carolina, who shall thereafter participate in the proceeding in the public interest, whether or not he shall have been requested by the Chairman of the Board of Commissioners to participate in the earlier phases of the prosecution of the complaint. At the time of filing his return as aforesaid, the respondent shall also file with the Clerk of this Court the original and ten copies of a brief in support thereof, together with proof of service of said brief upon the Secretary of the Board of Commissioners, upon the complainant or his counsel, and upon the Attorney General.

15. **Briefs on the Part of Complainant.**

Within fifteen (15) days after the filing of respondent's brief, the Attorney General and counsel for the complainant shall, jointly or severally, file with the Clerk of this Court the original and ten copies of such brief or briefs as they may deem necessary in answer thereto, together with proof of service thereof upon respondent or his counsel of record and upon the Secretary of the Board of Commissioners.

16. **Form of Return and Briefs.**

The return and briefs may be either printed or typewritten, mimeographed or machine duplicated. If printed, they shall conform to the requirements of Rule 5 of this Court; if typewritten, mimeographed or machine duplicated, they shall conform to the requirements of Rule 6.

17. **Review by Court.**

Upon failure of the respondent to make return to the order to show cause within the time hereinbefore prescribed, or after consideration of the return and such briefs as may have been filed in support of and in opposition to the same, and after hearing argument, if this Court shall desire to hear argument, thereabout, this Court shall enter such order upon the matter as it may find proper, and may include in its order such provision for reimbursement of the actual and necessary expenses incurred by the hearing panel and by the Board of Commissioners as the Court shall deem proper. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of this Court shall mail certified copies thereof: to the respondent, at his last known address; to the complainant; to all counsel of record; to the Board of Commissioners; to the local bar association or associations in the county or counties in which the respondent resides and maintains an office, and in the county or counties from which the complaint originated; to the Clerk of the Court of Common Pleas in each of said counties; and to the Clerk of the District Court of the United States for the district in which said counties are located.

18. **Proceedings Private Until Filed in Supreme Court.**

Unless and until otherwise ordered by this court, all proceedings and documents relating to complaints and hearings thereon and to proceedings in connection therewith shall be private, unless the respondent shall in writing request that they be public. All complaints shall be captioned "In The Matter of ————" (Name of respondent to be inserted): and except for the official records of the Board and of this court, all references to the respondent throughout any disciplinary proceeding under this Rule shall be by the use of the term "Anonymous", unless and until this court shall otherwise order.

No persons whomsoever in any way connected with a matter before the Board, including witnesses, counsel, counsel's secretaries, Respondent, Board Members, Board employees, reporters or investigators, shall mention the existence of any such proceeding, nor disclose any information pertaining thereto or discuss any testimony or evidence therein except to persons directly involved, and then only to such extent as necessary for a proper disposition of the matter. Provided, however, any proceeding before the Board may be made public upon written request of the Respondent. Violation of this provision shall be deemed contempt of this Court and punishable as such. All persons attending any proceedings or taking part in any matter hereunder shall be advised of this provision upon the commencement thereof. All records and correspondence held by members of the Board at the conclusion of their respective terms of office shall be carefully screened by them. They shall deliver all essential records and correspondence, so held, to the Secretary for filing with the permanent records of the Commission, and destroy all non-essential records having no permanent or continuing effect.

19. **Quorum of Board or Hearing Panel.**

A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes; and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

20. **Service of Notice, Etc.**

Wherever in this rule provision is made for the service of any notice, order, report or other paper or copy thereof upon any complainant or respondent or petitiner in connection with any proceeding involving a complaint or a petition for reinstatment, service may be made upon counsel of record for such complainant, respondent, or petitioner, either personally or by registered mail.

21. **Clerk is Agent for Service of Notices on Non-resident Attorneys.**

Service of any notice provided for in this rule upon any non-resident respondent who has been admitted to the practice of law pursuant to the rules of this court, or upon any resident respondent who, having been so admitted, subsequently becomes a non-resident or cannot be found at his usual abode or place of business in this state, may be made by the Secretary of the Board of Commissioners by leaving with the Clerk of this court a true and attested copy of such notice and any accompanying documents and by sending to the respondent, by registered mail, a like true and attested copy, with an endorsement thereon of the service upon the said Clerk, addressed to such respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or court before which there is pending any proceeding in which notice has been given as provided in this section may order such continuance as may be necessary to afford the respondent reasonable opportunity to appear and defend. The Clerk of this court shall keep a record of the day and hour of the service upon him of such notice and any accompanying documents.

22. **Members of Board May Issue Subpoenas and Order Depositions Taken.**

Each member of the Board of Commissioners shall have power to issue subpoenas and to administer oaths to witnesses. All such subpoenas shall be issued in the name and under the seal of this court, and shall be signed by a member of the Board of Commisioners. Any member of the

Board of Commissioners may order the testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions; and such depositions may be used to the same extent as permitted in civil actions.

23. **Effect of Refusal to Obey Subpoena or to Testify.**

If any person subpoenaed as a witness pursuant to this rule shall refuse or neglect to obey said subpoena, to attend, to be sworn or to affirm, or to answer any proper question, he shall be deemed in contempt of this court and punishable accordingly.

24. **Rules of Evidence to be Observed.**

The rules of evidence shall be observed in the conduct of all hearings.

25. **Docket of Complaints.**

The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, and the same shall be retained permanently as a part of the records of the Board of Commissioners.

26. **When Petition for Reinstatement May be Filed.**

No petition for reinstatment to the practice of law shall be filed within two years after the entry of an order indefinitely suspending the petitioner from the practice of law in this State, or within two years after the denial of a petition for reinstatement filed by such petitioner.

27. **Contents of Petition for Reinstatement.**

Subject to the foregoing restrictions, any person who has been indefinitely suspended from the practice of law and who wishes to be reinstated may file with the Clerk of this court his verified petition, and ten (10) copies thereof, setting forth:

(a) the date when indefinite suspension was ordered, and, if there was a reported opinion concerning the same, the volume and page of the official reports of this court where such opinion appears;

(b) the dates upon which any prior petitions for reinstatment were filed, denied or granted;

(c) the names of all persons and organizations, other than the petitioner and the Board of Commissioners, who were entitled under this Rule to receive from the Clerk of this court certified copies of the disciplinary order of this court resulting in the petitioner's suspension;

(d) the name of the county in which he resides at the time of the filing of the petition, and of each county in which he proposes to maintain an office if reinstated; and

(e) the facts upon which he relies to establish by clear and convincing proof that he has rehabilitated himself.

28. **Petition Referred to Committee on Character and Fitness.**

Unless the petition for reinstatement be summarily denied for insufficiency in form or substance, the Clerk of this court shall forward five (5) copies thereof to the Secretary of the Committee on Character and Fitness appointed under the rules of this court governing admission of persons to the practice of law in this State; and such petition shall be deemed to be referred, without court order, to said Committee.

29. **Action by Committee on Character and Fitness.**

The Committee on Character and Fitness shall, with all convenient dispatch, proceed to hold a hearing or hearings, take evidence concerning petitioner's character and his claim of rehabilitation, and report to this court the proceedings had before said Committee, together with the Committee's findings of fact and recommendations. Reasonable notice of all such hearings before the Committee shall be given to the petitioner or his counsel and to the President of the local bar association or associations in the county or counties in which the petitioner resides and in which he proposes to maintain an office in the event of his reinstatement. Such hearings may, in the discretion of the Committee, be public, and shall be public if the petitioner so requests in writing. Any interested person, any member of the bar, and any representative of the South Carolina Bar Association or of any local bar association may appear before the committee in support of, or in opposition to, the petition.

30. **Committee's Report to be Filed; Procedure Thereupon.**

The report of the Committee on Character and Fitness, and six (6) copies of the Committee's findings of fact and recommendations, shall be filed in the office of the Clerk of this court, who shall thereupon notify petitioner or his counsel of such filing and shall with such notice enclose a copy of the Committee's findings of fact and recommendations. If the Committee shall have recommended denial of the petition, the petitioner shall have ten (10) days from the date of his receipt of notice thereof from the Clerk within which to file with the said Clerk objections to the report and brief in support of such objections, together with five copies of such objections and brief; but no oral argument will be heard thereon. Upon consideration of the Committee's report and of such objections and brief as may have been filed by the petitioner concerning the same, the court shall enter such order as it may deem appropriate and may include in such order such provision for reimbursement of the actual and necessary expenses incurred in connection with the proceedings as shall appear just and proper.

31. **Investigation at Instance of Chairman; Procedure Thereunder.**

(a) Whenever, from sources deemed by him reliable, the chairman of the Commission learns of an attorney (who is licensed to practice in South Carolina) engaging in practices in violation of his duty as such attorney, and the Chairman comes to the conclusion that an investigation should be made, he shall designate one member of the Commission to act as an investigator. The member so designated shall investigate these reported violations of duty, and for this purpose he may call to his assistance such public investigating agencies as he may think proper. After making such investigation, should the investigator come to the conclusion that a complaint (as described in the section 7 hereof) should be made against the attorney investigated, he shall file such in his official capacity and be responsible for the prosecution thereof to a conclusion.

(b) When a member of the Commission shall have been selected to investigate the conduct of a particular member of the bar, he shall thereafter be disqualified to act as a member of the Commission insofar as such conduct of said member of the bar is concerned, otherwise than as such investigator and prosecutor as above set out.

32. **Rule to be Liberally Construed.**

The process and procedure under this rule shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objection, return, report or order, may be made at any time prior to final order of the court. Any party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This rule shall be liberally construed for the protection of the public, the courts, and the legal profession, and shall apply to all pending complaints, investigations and petitions whether the conduct involved occurred prior or subsequent to the effective date of this rule. To the extent that application of this rule to such pending proceedings may not be practicable, the procedure in force at the time this rule became effective shall continue to apply.

Every communication, whether oral or written, made by or on behalf of any complainant to the Board of Commissioners or any hearing panel or member thereof, pursuant to this Rule, whether by way of complaint or testimony, shall be privileged; and no action or proceeding, civil or criminal, shall lie against any such person, firm or corporation by or on whose behalf such communication shall have been made, by reason thereof.

33. The Board of Commissioners is empowered to adopt rules and regulations not inconsistent with this rule.

34. Nothing in these Rules shall be construed to deprive the Supreme Court of the authority to require the certification to it of the record in any case, for such action as it deems proper.